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MEMORANDUM OF LAW

DATE: November 20, 2000

TO: Tiffany Bromfield, Chief of Staff, Council District 5

FROM: City Attorney

SUBJECT: Possible Conflict of Interest Related to Councilmember's Financial Interest in Raytheon Corporation and Manpower Temporary Services/Proposed Enterprise Zone Expansion Item on City Council Docket of November 20, 2000

You asked the City Attorney's Office to determine whether Councilmember Blair has a conflict of interest which would disqualify him from participating in the City Council's decision related to an Enterprise Zone expansion, scheduled to be heard by the Council on the November 20, 2000 docket.

QUESTION PRESENTED

You have asked if Councilmember Blair's economic interests in Raytheon Corporation and Manpower Temporary Services present a conflict of interest that would disqualify him from participating in the City Council's decision on a proposed Enterprise Zone expansion which involves potential financial benefit to Raytheon and Manpower.

SHORT ANSWER

No, Councilmember Blair is not disqualified from participating in the decision. Councilmember Blair has a financial interest in Raytheon, which is a source of income to the Councilmember, and in Manpower Temporary Services, because he is co-owner of three Manpower franchises. However, the tax credits which will be available to Raytheon and Manpower as a result of the Enterprise Zone expansion will not meet the dollar thresholds in the Political Reform Act for being a "material" financial effect on either company, therefore

Councilmember Blair's interest in these two companies does not disqualify him from participating in the decision.

BACKGROUND FACTS

Councilmember Blair is co-owner of three Manpower Temporary Services franchises in San Diego, Temecula, and New Mexico. Manpower, the world's largest provider of temporary help, is traded on the New York Stock Exchange, and is on the Fortune Magazine list of the 1,000 largest companies in the United States.

Raytheon is one of the largest industrial corporations in the United States, specializing in defense and commercial electronics, and aviation. Raytheon is also listed on the New York Stock Exchange, and is on the current Fortune Magazine list of the 1,000 largest companies in the United States. Raytheon is a significant client to Manpower, and as such, has been a source of income to the Councilmember of more than \$250 in the last twelve months.

On November 20, 2000, the City Council is scheduled to make a decision about applying to the state Trade and Commerce Agency to expand the boundaries of an existing Enterprise Zone in the San Ysidro/Otay Mesa area of the City. Enterprise Zones are geographic areas designated by the California Trade and Commerce Agency, in which companies doing business can claim state income tax credits and other advantages. Cal. Gov't Code sections 7070-7086. Enterprise Zones are designated in order to attract and retain businesses in areas which are economically depressed. The expansion of the San Ysidro/Otay Mesa Enterprise Zone, if approved, would result in a Raytheon facility being within the new Enterprise Zone boundaries, and becoming entitled to tax credits as a result of being located in the expanded Enterprise Zone. Additionally, the expansion of the Enterprise Zone would result in Manpower becoming eligible for some tax credits as well, based on Manpower's placement of temporary employees at Raytheon.

Based on information provided to the City by Pete Colan, District Operations Manager for Raytheon, the tax credits which Raytheon would be entitled to for calendar year 2001 as a result of the Enterprise Zone expansion have been estimated as follows: (1) approximately \$93,875 hiring tax credit, and (2) \$77,500 sales and use tax credit, for a total of approximately \$171,375 in tax credits for calendar year 2001. (See "Raytheon Projected Enterprise Zone Benefit for 2001," which is attached).

The potential benefit to Manpower in tax credit eligibility from the Enterprise Zone expansion is more difficult to estimate, because it is unknown how many new Manpower temporary employees will be placed at Raytheon in calendar year 2001. Raytheon estimates that it will be hiring approximately 25 new temporary employees from several temporary agencies,

including Manpower. The twenty five new temporary employees represent approximately \$93,875 in tax credits, and Manpower will become eligible to receive a percentage of that amount, depending on how many of the 25 new temporary employees come from Manpower.

According to Councilmember Blair, Manpower will not be applying for any tax credits as a result of the Enterprise Zone expansion. Additionally, Councilmember Blair does not anticipate deriving any direct financial benefit as a result of the decision to expand the Enterprise Zone.

ANALYSIS

I. Political Reform Act of 1974

This matter is governed by the Political Reform Act of 1974 [Act], which is codified at California Government Code sections 81000-91015. The Act was adopted to ensure that public officials perform their duties in an impartial manner, free from bias caused by their financial interests. Cal. Gov't Code § 81001.

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member or his or her immediate family, or on any of six economic interests delineated in California Government Code section 87103. Those six interests are investments in business entities; interests in real property, income received in the previous twelve months, positions in business entities, and gifts received in the previous twelve months. Investments, income, and gifts must meet threshold dollar values set by the Act before they become potential sources of disqualification. Cal. Gov't Code § 87103.

The Act provides an eight part test for determining if a public official has a disqualifying conflict of interest:

1. Is the individual a public official?
2. Will the public official be making, participating in making, or using or attempting to use his official position to influence a governmental decision?
3. What are the official's economic interests?
4. For each economic interest, is it directly or indirectly involved in the governmental decision?

5. For each economic interest, what is the appropriate materiality standard?
6. Based on the materiality standard, is it reasonably foreseeable that the governmental decision will have a material financial effect on each economic interest?
7. If the answer to number 6 is yes, is the financial effect distinguishable from the effect on the public generally?
8. If there is a disqualifying conflict of interest, is the public official's participation legally required?

Cal. Code Regs., tit. 2, § 18700(b).

1. The Councilmember is a Public Official

A City Councilmember is a public official within the meaning of the Act. Cal. Code Regs., tit. 2, § 18701(a).

2. The Councilmember Will be Making a Governmental Decision Regarding the Enterprise Zone Expansion

Voting on a matter, and committing an agency to a particular course of action, is making a governmental decision for purposes of the Act. Cal. Code Regs., tit. 2, § 18702.1.

3. The Councilmember Has Several Economic Interests Relevant to Raytheon and Manpower

Councilmember Blair has the following economic interests in Raytheon and Manpower, as delineated in California Government Code section 87103:

- a. Raytheon, as a source of income of \$250 or more in the last twelve months. Cal. Gov't Code § 87103(c).
- b. Manpower, as a source of income of \$250 or more in the last twelve months. Cal. Gov't Code § 87103(c).
- c. Manpower, as an investment in a business entity of \$1,000 or more. Cal. Gov't Code § 87103(a).

- d. Manpower, as a business entity in which the public official is a partner, and holds a position of management. Cal. Gov't Code § 87103(d).

4. Are the Economic Interests Directly or Indirectly Involved in the Governmental Decision?

A business entity is directly involved in a governmental decision only when it initiates the proceeding by application, claim, appeal or similar request, or when the business is a named party in or the subject of the decision. Cal. Code Regs., tit. 2, § 18704.1(a). Applying that standard to the present case, Raytheon and Manpower are not directly involved in the decision on the Enterprise Zone expansion.

5. What is the Applicable Materiality Threshold for the Economic Interests?

Next, it must be determined if the Enterprise Zone expansion decision will have a reasonably foreseeable material economic effect on any of those interests. It should be emphasized that this analysis relates to material economic effects on the businesses, not on the Councilmember or his personal finances. In order to determine if there is a material economic effect on Raytheon or Manpower, the applicable materiality threshold must be identified.

All four of the Councilmember's economic interests that have been identified are interests in business entities indirectly involved in the governmental decision. Therefore, the materiality standard that applies is that contained in title 2, section 18705.1 of the California Code of Regulations. Cal. Code Regs., tit. 2, § 18704.1(b), 18705.1(b). The standard for business entities listed on both the New York Stock Exchange, and on the "Fortune 1000" list, is that the effect of the governmental decision is material if any of the following apply:

- (A) The decision will result in an increase or decrease to the gross revenues of the business for a fiscal year of \$1,000,000 or more.
- (B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$250,000 or more.
- (C) The decision will result in an increase or decrease in the value of assets or liabilities of \$1,000,000 or more in a fiscal year.

Cal. Code Regs., tit. 2, § 18705.1(b)(1).

6. Will the Governmental Decision Result in a Reasonably Foreseeable Material Financial Effect On the Economic Interests, Based on the Materiality Standard Identified Above?

In this case, the materiality threshold for disqualification is extremely high because of the size of the two businesses involved. The City staff estimates of the potential tax credits which Raytheon and Manpower may receive as a result of this decision are less than \$100,000 for a calendar year. It is not reasonably foreseeable that the companies will experience increased or decreased revenues of \$1,000,000 or more, will incur or avoid expenses of \$250,000 or more, or have an increase or decrease of assets or liabilities of \$1,000,000 as a result of the expanded Enterprise Zone. Therefore, it is not reasonably foreseeable that a material financial effect will result from this decision, and Councilmember Blair is not disqualified from participating in the decision.

Because there is no disqualifying conflict of interest, it is not necessary to discuss steps seven and eight from the eight part test.¹

II. Council Policy 000-4

San Diego City Council Policy 000-4 states in pertinent part:

No elected official, officer, appointee or employee of the City of San Diego shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or would tend to impair his independence or judgment or action in the performance of such duties.

Under this policy, it is within a Councilmember's discretion to determine if a personal or financial interest in a matter makes participation in a decision on that matter "incompatible with the proper discharge of his official duties" or would "tend to impair his independence or judgment or action" If the Councilmember determines that his participation in the decision to expand the San Ysidro/Otay Mesa Enterprise Zone would be inappropriate under Council Policy 000-4, he may choose to abstain from participating in the item. It should be emphasized however, that this result is not required under the law, and that Council Policy 000-4 is a policy which does not have the force and effect of law.

CONCLUSION

¹Because Councilmember Blair is not legally disqualified to participate in the decision in question, he is not required by the Political Reform Act to disclose his economic interests on the record. Cal. Code Regs., tit. 2, § 18702.1(a)(5).

Although the expansion of the San Ysidro/Otay Mesa Enterprise Zone could result in some tax credits to Raytheon and Manpower, the amount of those credits does not constitute a disqualifying “material” effect on the companies for purposes of the Political Reform Act. Therefore, Councilmember Blair does not have a disqualifying conflict of interest, and may legally participate in the decision.

CASEY GWINN, City Attorney

/ S/

By

Lisa A. Foster

Deputy City Attorney

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Attachment

ML-2000-18